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IN THE  
**Supreme Court of the United States**

THE EUROPEAN COMMUNITY, *et al.*,

*Petitioners,*

v.

RJR NABISCO, INC., *et al.*,

*Respondents.*

DEPARTMENTS OF THE REPUBLIC OF COLOMBIA,

*Petitioners,*

v.

PHILIP MORRIS COMPANIES, INC., *et al.*,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

In *European Community v. RJR Nabisco, Inc.*, 125 S. Ct. 1968 (2005), this Court vacated the judgment of the Second Circuit, which had applied a broad version of the “revenue rule” to bar “smuggling” claims. This Court remanded the case to the Second Circuit for reconsideration in light of *Pasquantino v. United States*, 125 S. Ct. 1766 (2005), which recognized that modern courts have applied the revenue rule in “traditional” circumstances, specifically where the claim seeks to collect an unpaid foreign tax debt from a tax debtor. On remand, the Second Circuit “reinstated” its prior decision, effectively following the *dissenting* opinion in *Pasquantino*.

The questions presented are:

1. Whether the Second Circuit, on remand, failed to comply with this Court’s mandate, *Pasquantino v. United States*, 125 S. Ct. 1766 (2005), and settled law by applying its broad version of the “revenue rule” to bar claims under U.S. domestic law to enjoin and deter domestic tortious conduct.
2. Whether the Second Circuit correctly held, in conflict with the decisions of this Court, the Fourth and Eleventh Circuits, and the Restatement (Third) of Foreign Relations Law § 483 (1987), that the revenue rule is a mandatory doctrine akin to a jurisdictional bar, and not a discretionary abstention doctrine.

## PARTIES TO THE PROCEEDING

The Petitioners in the case of the European Community ("EC") and Member States are the EC, Kingdom of Belgium, Republic of Finland, French Republic, Hellenic Republic, Federal Republic of Germany, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Portuguese Republic, and Kingdom of Spain. The action was originally brought against RJR Nabisco, Inc., R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., RJR Acquisition Corp. (formerly known as Nabisco Group Holdings Corp.), and R.J. Reynolds Tobacco Holdings, Inc.<sup>1</sup> In the Second Circuit, on the original appeal, the World Health Organization, the Federal Law Enforcement Officers Association, and the National Campaign for Tobacco Free Kids all appeared as *amici* supporting the principle that foreign governments should be permitted to avail themselves of the U.S. courts in this case.

The Petitioners in the case of the Departments of the Republic of Colombia are the Departments of Amazonas, Antioquia, Atlantico, Bolivar, Boyaca, Caqueta, Casanare, Cesar, Choco, Cordoba, Cundinamarca, Huila, La Guajira, Magdalena, Meta, Narino, Norte de Santander, Putamayo, Quindio, Risaralda, Santander, Sucre, Tolima, Valle del Cauca, and Vaupes, and Santa Fe de Bogota, D.C. The case was brought against British American Tobacco (Investments) Limited, BAT

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1. Philip Morris International, Inc., Philip Morris Companies, Inc., Philip Morris Incorporated (doing business as Philip Morris Products, Inc.), and Philip Morris Duty Free, Inc. were parties to the action on the original petition to this Court; however, on motion of the EC and the Member States in the Court of Appeals, the Philip Morris entities were dismissed as parties to the EC case. See App. 6a n.5.

Industries plc, Brown & Williamson Tobacco Corporation, BATUS Tobacco Services, Inc., and British American Tobacco (South America) Ltd.; and Philip Morris Companies, Inc., Philip Morris Incorporated d/b/a Philip Morris USA, Philip Morris International, Inc., Philip Morris Products, Inc., Philip Morris Latin America Sales Corporation, and Philip Morris Duty Free, Inc.<sup>2</sup>

### CORPORATE DISCLOSURE STATEMENT

The Member States are sovereign states. The EC is a governmental body created as a result of collaboration among the majority of the nations of Western Europe, presently, Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. The EC possesses the most extensive legal capacity accorded to legal persons under the laws of the Member States, and it may, in particular, be a party to legal proceedings. In such instances, the EC is represented by the European Commission.

The Departments of the Republic of Colombia and Santa Fe de Bogota, D.C., are political subdivisions of a sovereign state.

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2. The EC and Member States commenced a separate action against Japan Tobacco, Inc., JT International Manufacturing America, Inc., JTI Duty Free USA, Inc., JT International S.A., Japan Tobacco International U.S.A. and Premier Brands, Ltd. The District Court dismissed that action, and the Court of Appeals vacated that judgment. On September 13, 2005, on remand from this Court, the Court of Appeals adhered to its prior decision "because the district court prematurely dismissed the action before an adverse party was joined." *See* App. 5a n.4.

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